AMS Directive 265.1 5/20/85

#### DISPOSAL OF EXCESS AGRICULTURE COMMODITIES

#### I. PURPOSE

#### This Directive:

- A. Sets forth policy on the disposal of excess agricultural commodities, and prescribes methods of disposing of such commodities.
- B. Does not apply to commodities acquired for commodity distribution programs, commodities acquired by exchange for research, and does not circumvent any existing program regulations.

## II. REPLACEMENT HIGHLIGHTS

This Directive replaces AMS Instruction 265-1, Rev. 2 (3/21/84). This revision incorporates changes in regulations and clarifies actions needed to ensure compliance with these laws.

#### III. AUTHORITY

Agricultural Federal Property Management Regulations 104-43.315, 104-44, 104-45, and Cotton Statistics and Estimates Act (7 U.S.C. 478a).

## IV. DEFINITIONS

- A. Agricultural commodity is a product resulting from the cultivation of the soil or husbandry on farms. As used in this Directive:
  - 1. Perishable commodities are fresh or processed packaged grains, edible oils, tobacco, etc.
  - Nonperishable commodities are cotton, dried beans, rice, etc.
  - 3. Other products are those furnished to or obtained by AMS for grading, classification, inspecting, testing, developing standards, research, or experimentation.
- B. Excess is any commodity under the control of AMS which is not required for its needs.
- C. Public body is any State, United States territory, any political subdivision thereof, the District of Columbia, any agency or instrumentality of the foregoing, or any agency of the Federal Government.

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#### V. POLICY

A. No employee will appropriate or permit another employee to appropriate for personal use any agricultural commodity belonging to the Government or under the custody or supervision of the Government. This applies whether or not such item has been ordered to be destroyed or abandoned. If any agricultural commodity is appropriated by an employee for personal use, the supervisor must take immediate action to recover the commodity or its value, and must report the offense in accordance with procedures in AMS Instruction 366-1, Reporting Misconduct and Other Offenses and Alleged or Suspected Bribery Attempts.

- If any question regarding the disposition of an agricultural commodity arises from the public or other sources, the Accountable Property Officer (APO) must make and retain memorandum notes of the circumstances. If such circumstances warrant, they must be reported.
- In disposing of perishable agricultural commodities by sale, care shall be taken to guard against preference being given to any employee(s) over other prospective purchasers.

#### VI. OWNERSHIP

- Excess agricultural commodities resulting from cooperative activities shall be considered AMS property unless the cooperative agreement specifically provides otherwise, in which case the terms of the cooperative agreement must govern.
- Excess agricultural commodities which remain after AMS has completed the grading, classification, inspection, testing, development of standards, research, or experimentation on the commodity furnished to AMS for such purpose, shall be considered AMS property unless:
  - 1. There is a specific agreement for return of the commodity to the party from whom it was obtained; or
  - 2. Ownership of the commodity is otherwise established by written agreement.

### VII. AUTHORITY

Authority to dispose of excess agricultural commodities either DELEGATION OF by sale or other methods, as outlined in this Directive, is delegated to the incumbents (or those acting for them) in the positions listed below. This delegation of authority cannot be redelegated.

- Accountable Property Officer, Washington, D.C. Α.
- В. Accountable Property Officer in field offices.
- C. Administrative Officer.

#### VTTT. DISPOSAL OF PERISHABLES

A determination has been made that it is not practicable or economical to attempt to transfer excess perishable agricultural commodities, of the type covered by this Directive, to other agencies of the Department or to other Federal agencies. Items in questionable condition shall not be disposed of in a manner that could result in human consumption. Disposal of commodities shall be handled as follows:

- Donation to Major Disaster Relief. Excess agricultural commodities may be donated to supplement food supplies in declared major disaster areas (Executive Order No. 12148, dated January 20, 1979). Field offices having such excess commodities in locations determined by the President to be major disaster areas should contact the local civil defense office for instructions.
- Sales. Excess perishable agricultural commodities which are in salable condition, and in sufficient quantities that fair value may be reasonably expected and warrant the administrative cost involved, shall be sold at the best price obtainable. Excess food sales to the public shall be confined

to items in good consumable condition and properly labeled. All sales are to be on a "where is and as is" basis, with no warranty expressed or implied.

- 1. Solicitation of Offers. The seller is responsible for obtaining reasonable competition consistent with the items and conditions involved in the sale. Generally, offers should be obtained from two or more sources within the usual trade area in which the items are located to ensure a fair sale price. However, where the quantity is so small that solicitation of private persons is not justified, solicitation may be confined to office employees if such will result in a fair sale price. It is preferable, of course, that an outside offer be obtained if practicable. Excessive solicitation and storage in relation to anticipated sales proceeds should be avoided to prevent possible spoilage of perishable items. Offers may be solicited orally, either by personal contact or by telephone.
  - 2. Sales to Employees. Excess perishable agricultural commodities may be sold to employees when:
    - a. The sale is at the best price obtainable, and
    - b. The quantity involved does not exceed the needs of the employees' immediate households.
- 3. Release of Commodity. Commodities sold by negotiated sale shall not be released to purchasers until full and proper payment of the purchase price is made.
- 4. Records of Sales. Upon completion of a sale, APO shall complete Form AD-107, Report of Transfer or Other Disposition or Construction of Property. Attachment 1 explains how to prepare the form. Forward a copy of the AD-107 to:

USDA, APHIS, FSO Accounting and Property Services Butler Square, West 100 North Sixth Street Minneapolis, MN 55403

5. Proceeds of Sale. Payment for any excess agricultural commodities sold shall be in the form of cash, money order, or certified or cashier's check. If cash is received, it shall be converted to a money order. Payments shall be forwarded within 24 hours, if practicable, but in every case within 1 week after receipt.

Cotton Division

Payment shall be made payable to U.S. Department of Agriculture and transmitted with Form AMS-562, Transmittal of Collection For Deposit. Send payment to:

USDA, AMS, Cotton Classing P.O. Box 85049 Dallas, TX 75285

Tobacco Division

Payment shall be made payable to Agricultural Marketing Service, USDA, and transmitted with Form AMS-41, Transmittal of Checks. Send payment to:

USDA, Agricultural Marketing Service Fiscal Operations and Systems Branch Financial Management Division Washington, DC 20250

#### C. Donation.

- 1. Excess perishable agricultural commodities that cannot be donated to major disaster relief areas or sold may be donated to public bodies, including public welfare institutions. The APO shall obtain a receipt for such donation.
- 2. If it is impracticable to donate to public bodies, excess perishable agricultural commodities (which cannot be disposed of otherwise as set forth in this Directive) may be

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donated to private welfare institutions in lieu of destruction. The APO shall make memorandum notes of these donations. Persons who receive excess agricultural commodities shall pay all costs incident to the donation.

D. Destruction. Perishable agricultural commodities, which at the time of becoming excess are unfit for use, or which spoil before sale or donation can be made, shall be destroyed. Small quantities, such as partial cans of processed foods, parts of packaged foods, etc., which are not in marketable condition or are impracticable to offer for sale and which cannot be donated shall be destroyed.

# IX. DISPOSAL OF NONPERISHABLE COMMODITIES

Excess nonperishable commodities may be disposed of as indicated below:

- A. Donation to Major Disaster Relief. The commodity may be donated to State and local governments to provide assistance in alleviating suffering resulting from major disasters.
- B. Donation for Educational or Public Health Purposes. The commodity may be donated for educational or public health purposes when a need for such has been made known by the Department of Health and Human Services.
- C. Sales. The commodity may be sold under the procedures outlined for perishables. See Section VIII.B for solicitation of offers, records, and submission of proceeds. Exception:

  No purchase shall be made by a Department employee.
- D. Donation.
  - The commodity may be donated to public bodies or public welfare institutions in the same manner as perishables (see Section VIII.C. above).

- If the commodity cannot be sold or donated as indicated above, it may be donated to private welfare institutions in lieu of destruction. Memorandum notes shall be made of donations.
- E. Destruction. Nonperishable commodities shall be destroyed if they are unfit for use at the time of becoming excess.
- X.
  DISPOSAL OF
  COMMODITIES
  NOT OWNED

BY AMS

- A. Return to Party From Whom Obtained.
  - 1. If the commodity was furnished to AMS under an agreement which provides for its return to the furnishing party when needs of AMS have been served, the APO shall:
    - a. Arrange with the furnishing party immediately upon availability of the commodity for its removal.
    - b. Upon return of the commodity, obtain and file a receipt showing the type and quantity involved, and cite the agreement.
  - Destroy the commodity if it spoils before removal, inform the furnishing party, and record the circumstances in the files.
- B. Disposal by AMS.
  - 1. If the agreement provides for the commodity to be disposed of by AMS in a manner other than by return to the party from whom obtained, disposal shall be made in accordance with the terms of the agreement, provided that:
    - a. No perishable commodity is to be sold to any employee except at the best prices obtainable, and in a quantity not to exceed the needs of the immediate household.
- b. No nonperishable commodity is to be sold to a Department employee.
- 2. Commodities unfit for human use or otherwise unusable shall be destroyed.

James C. Handley Administrator

#### Attachment

Attachment 1 to this Directive is a sample of Form AD-107, Report of Transfer or Other Disposition or Construction of Property. For a copy of this attachment, contact MRP-MSD-Printing and Distribution Branch.